

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL J. SMITH, et al,

Plaintiffs,

vs.

K. MENDOZA-POWERS, WARDEN,

Defendants.

No. C 06-3055 JSW (PR)

ORDER OF TRANSFER

Plaintiff is a state prisoner currently incarcerated at Avenal State Prison, located in Avenal, California, within the venue of the United States District Court for the Eastern District of California. He filed this civil rights action in the United States District Court for the Northern District of California on May 5, complaining on behalf of himself and other prisoners of violations of their civil rights due to overcrowding at that facility. Although Plaintiff paid a \$5.00 filing fee (which is the cost to file a petition for a writ of habeas corpus), the Court Clerk has notified Plaintiff that he must either pay the appropriate filing fee for a civil action of \$350.00, or complete the Court's *in forma pauperis* application, which he has not yet completed. However, because Plaintiff's action seeks emergency injunctive relief, the Court will transfer this matter without waiting for Plaintiff to file such an application in this Court.

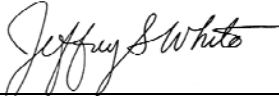
When jurisdiction is not founded solely on diversity, venue is proper in the district in which (1) any defendant resides, if all of the defendants reside in the same state, (2) the district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no

1 district in which the action may otherwise be brought. 28 U.S.C. § 1391(b). Where a
2 case is filed in the wrong venue, the district court has the discretion either to dismiss the
3 case or transfer it to the proper federal court “in the interest of justice.” 28 U.S.C. §
4 1406(a). Venue may be raised by the court sua sponte where the defendant has not yet
5 filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790
6 F.2d 1486, 1488 (9th Cir. 1986).

7 Plaintiff complains about conditions of confinement at Avenal State Prison,
8 located in Fresno County, within the venue of the Eastern District of California. *See* 28
9 U.S.C. § 84. Therefore, the Court will transfer this action to the United States District
10 Court for the Eastern District of California. Accordingly, IT IS ORDERED in the
11 interest of justice, and pursuant to 28 U.S.C. § 1406(a), that this action be
12 TRANSFERRED to the United States District Court for the Eastern District of
13 California. The Clerk of the Court shall transfer this matter forthwith.

14 IT IS SO ORDERED.

15 DATED: May 31, 2006

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18 JEFFREY S. WHITE
19 United States District Judge
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